UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

IN RE: VALSARTAN, LOSARTAN, AND IRBESARTAN PRODUCTS LIABILITY LITIGATION **This Document Relates to All Actions**	MDL No. 2875 Honorable Robert B. Kugler, District Court Judge Honorable Joel Schneider, Magistrate Judge

DEFENDANTS' RESPONSE TO PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants respectfully respond to Plaintiffs' Notice of Supplemental Authority (ECF 607) (the "Notice"), as follows:

Plaintiffs' submission of *Muransky v. Godiva*, No. 16-16486 *slip op*. (11th Cir. Oct. 28, 2020), as supplemental authority in this matter is misplaced, as *Muransky* adds nothing meaningful to the Court's consideration of Defendants' pending motions to dismiss. As the Notice itself concedes, the issue in *Muransky* is "unrelated to the motions to dismiss here[.]" (ECF 607 at 1). The ruling simply confirms that a plaintiff asserting claims based on procedural violations of a federal statute lacks standing under *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016). Plaintiffs tender *Muransky* as supplemental authority based solely on its discussion of *Debernardis v. IQ Formulations, LLC*, 942 F.3d 1076 (11th Cir. 2019), a case relied upon by Plaintiffs as the principal authority supporting their assertion of standing.

But the Eleventh Circuit did not apply *Debernardis* to support its decision in *Muransky*, nor was the validity of its reasoning in *Debernardis* at issue there, as it is here. (*See* Manufacturer Defendants' Reply Brief in Support of Their Motion to Dismiss (ECF 598) at 8 (criticizing the reasoning of *Debernardis*)). *Muransky* merely references *Debernardis* as one example of the "variety of approaches" that can be used to demonstrate standing by direct harm. *Muransky*, *slip op*. at 15.[1]

To the extent this Court considers the Eleventh Circuit's subsequent treatment of *Debernardis*, the more relevant authority is *Doss v. General Mills*, 816 Fed. App'x 312 (11th Cir. 2020) (attached as Ex. A hereto). There, the Eleventh Circuit held that the *Debernardis* approach to standing does not establish an economic injury merely because the plaintiff alleges that she "would not have purchased" products "if she knew they contained" a contaminant alleged to be a health hazard. *Id*. at 314. In rejecting plaintiff's theory of standing based on allegations that she had purchased cereal containing potentially harmful trace amounts of glyphosate, a "probable human carcinogen," the Eleventh Circuit held that the *Debernardis* "valueless" framework does not establish standing where the plaintiff "has not alleged that she purchased any boxes of Cheerios that contained <u>any</u> glyphosate, much less a level

[1] In *Muransky*, the Eleventh Circuit found that plaintiff failed to allege standing for a lawsuit involving improper truncation of credit card receipts that did not result in concrete harm or a material risk of harm. The court relied on longstanding precedent which requires "something more than a minor or theoretical risk," but rather "a substantial risk that the harm will occur" to confer standing absent a concrete injury. *Muransky*, slip op. at 16-17 (internal citations omitted). While not directly on point, *Muransky* is instructive in requiring concrete harm or a *substantial risk* of harm to confer standing, neither of which is plausibly alleged here.

of glyphosate that is so harmful that Cheerios are 'presumptively unsafe' and therefore worthless." *Id*. at 313-14 (emphasis in original).

Doss thus confirms that, even in those jurisdictions adopting the erroneous reasoning of *Debernardis* rather than the better-reasoned precedent from the Third Circuit, this District, and other courts cited in Defendants' opening brief (*see* Manufacturer Defendants' Motion to Dismiss (ECF 520-3) at 10-15), an allegedly adulterated product is not "worthless" just because Plaintiffs say it is. Accordingly, *Muransky* and *Debernardis* do not support Plaintiffs' standing.

Dated: November 11, 2020

Respectfully submitted,

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